IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8570 of 2002
For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURENDRA CHANDULAL JAYSWAL
Versus
STATE OF GUJARAT

Appearance:
MS SUBHADRA G PATEL for the Petitioner.
Mr.M.K.Patel, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged the detention order dated 24.7.2002. By the said order, the petitioner is detained as a 'bootlegger' under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985. Along with the detention order, he is served with the grounds of detention of the said date. In the said grounds of detention, there is a reference about two cases, which are filed against the petitioner under the provisions of

the Bombay Prohibition Act.

It is alleged against the petitioner that he is a head strong person and he is illegally selling English liquor and he is selling dangerous weapons. In the grounds of detention, there is a mention about statements of two witnesses. In the said statements of witnesses, the alleged activities of the petitioner are highlighted. The authority, after having been satisfied about the alleged activity of the petitioner, has passed the present detention order. The said order is impugned in the present petition.

The learned Advocate for the petitioner submitted that the authority recorded the statement of the witnesses on 22nd July, 2002. Those statements were verified by the Detaining Authority on 23rd July, 2002 and the detention order is passed on the very next day, i.e. 24.7.2002. It is submitted that the authority has passed the order in a mechanical manner, because, the detention order is passed on the very next day, after verifying the statements of the two witnesses. In this connection, learned Advocate for the petitioner relied upon the decision of this Court in Ranubhai Bhikhabhai Bharwad v. State of Gujarat & Ors., XLI(3) GLR 2696. A learned single Judge of this Court, while dealing with the situation of passing order immediately on the next day after verification of the Statements of Witnesses, has observed in paragraph 9 as under :-

> " ... ...
>
> The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August 1999, 21st August 1999 and 25th August 1999 with regard to the incidents dated 10th July 1999, 13th June, 1999 and 26th June, 1999 were the material along with the proposal which is said to have been made on 27th August 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August 1999 at any time prior to 29th August 1999 and on 29th August, 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the

> statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e. on 30th August 1999 the detention order has been passed.
>
> ... ..."

The authority has not filed any affidavit, controverting the said averment and considering the factual aspect of the matter and considering the judgment of this Court, referred above, in my view, since this Court has taken the view that it would be normally presumed that the order is passed in a mechanical manner if it is passed on the next day, the order of detention is required to be set aside on the aforesaid ground.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made absolute.

4th March, 2003 (P.B. Majmudar, J.)

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(apj)